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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,306	02/13/2002	Alexander Leonidovich Berestov	03650.001013	6316
5514	7590	09/16/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			FILIPCZYK, MARCIN R	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/073,306

Applicant(s)

BERESTOV, ALEXANDER  
LEONIDOVICH

Examiner

Marc R. Filipczyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

This Action is responsive to Applicant's response filed on June 30, 2005. Claims 4 and 11 have been cancelled and claims 1-3, 5-10 and 12-17 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-3, 5-10 and 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claims 1 and 15, "the topography direction" is indefinite. It is not clear what a topography direction is.

Regarding claim 16, the segment, "applications that do not involve fusion" is indefinite. It is not clear what applications are and are not involved in the fusion.

Regarding claims 2, 3, 5-10, 12-14 and 17 depend from claims 1 and 16 respectively, and are therefore rejected on the same basis.

***Claim Rejections - 35 USC § 102***

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3, 5-10 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Henderson et al (U.S. Patent No 6,047,227).**

Regarding claims 1, 15 and 16, Henderson discloses a data storage format for storing topography data associated with an object comprising (fig. 1):

a first section for storing topography data in relation to a reference entity with respect to which the topography data is determined (fig. 1, item 104, and col. 3, lines 27-29: *desired site*);

a second section for storing information concerning the reference entity (fig. 1, item 104, and col. 3, lines 27-29: *actual site*);

a third section for storing information concerning the topography direction along which the topography data is measured or calculated (fig. 1, item 102, and col. 3, lines 29-36: *differencing algorithm*), and Henderson further discloses an image is fused to the topography data (figs. 5A and 5B, col. 7, lines 20-23: site contours are overlaid).

Regarding claims 2 and 3, Henderson discloses the topography and reference entities are in

N-dimensional space (figs. 5A and 5B)

(Note: site models are 3 dimensional [3-D] geographies)

Regarding claims 5-7, Henderson discloses the reference entity is described as a function, point or line in N-dimensional space (figs. 5A and B; function)

(Note: functions can be simplified to a line and a point by reducing their dimensions, i.e., xyz plane to xy coordinate, a point)

Regarding claims 8-10, Henderson discloses the reference entity and topographic direction are in Cartesian or non-Cartesian coordinate system and that their coordinates are known (col. 3, lines 17-25).

(Note: GPS and Radar use both Cartesian and non-Cartesian coordinate system to locate/monitor objects/geographies)

Regarding claim 12, Henderson discloses the reference entity and the topography direction are registered with respect to a first coordinate system, the first coordinate system being registered to the global coordinated system (col. 3, lines 17-25 and fig. 3, items 312 and 316).

Regarding claim 13, Henderson discloses a transformation is performed between the first coordinate system and a second coordinate system to which a three dimensional image is registered, the second coordinate system being independent from the first coordinate system and being registered to the global coordinate system (fig. 3, GPS, and col. 3, lines 29-35).

Regarding claims 14 and 17, Henderson discloses a three dimensional image is fused to the topography data (figs. 5A and 5B, col. 7, lines 20-23: site contours are overlaid).

***Response to Arguments***

Applicant's amendment and arguments filed June 30, 2005 have been fully considered but they are not persuasive. The arguments and responses are listed below.

Applicant argues on pages 9 and 10 in the 6/30/2005 response that, "Henderson does not disclose any data storage format whatsoever.

Examiner disagrees. Applicant does not claim any particular data storage format and it appears that the claimed features are not concerned with different types of formats. Further, claim 1 only mentions a data format in the preamble and is not supported or defined by any dependent claims. Every data comprises a default format and Examiner equates Applicant's data format of simply N-dimensions to Henderson's models which also use N-dimensional geographies, i.e., 3-D (please refer to the rejections).

Applicant argues on pages 10 and 11 in the 6/30/2005 response that, 'nothing in Henderson specifies that its "actual site" model is the reference entity with respect to which the "desired" site model is determined.'

Examiner disagrees. The purpose of Henderson system is to bring the actual site geography into conformity with the desired site geography (see abstract). One of ordinary skill in the related art understands that the desired site geography is limited by the actual site

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geography by a number of factors, related size being one of them. Clearly the actual site is the reference entity for the desired site. Figure 1 further illustrates that once the sites are loaded into a database (104), machine position (100) is used to calculate and measure the sites via an algorithm (102) because the coordinates of both sites are known (fig. 2) and a dynamic site model represents the difference between the actual and desired sites and is displayed (fig. 1, and col. 3, lines 30-41).

Examiner notes that no other arguments were presented. Applicant's attempt to overcome all the objections and rejections is fully appreciated, however, some issues remain unresolved and claims 1-3, 5-10 and 12-17 remain rejected under 35 U.S.C. 112, second paragraph, and prior art.

With respect to all the pending claims 1-3, 5-10 and 12-17, Examiner respectfully traverses Applicant's assertion based on the discussion and rejections cited above.

### *Conclusion*

To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R. Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF  
September 7, 2005

  
**FRANTZ COBY**  
**PRIMARY EXAMINER**